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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,415	10/15/2003	Dalius Klakauskas	74.2860	4404

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EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/684,415

Applicant(s)

KLAKAUSKAS, DALIUS

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date Application as filed.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the additional foam layer fused to the lining fabric as claimed in claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The disclosure is objected to because of the following informalities: There is no page 6 and pages after page 5 are mis-numbered. On page 8, line 12, "knot" should read - - knit - - .

Appropriate correction is required.

### ***Claim Objections***

Claim 1, line 9 is objected to because of the following informalities: the period (.) after "end" should be removed. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 10 it is not clear as to whether an additional layer of foam is fused to the lining fabric in addition to the foam layer already discussed in claim 1. In claim 14, it is not clear as to whether a bra or method of making a bra is being claimed in regard to the nipple recess being adapted to receive an artificial nipple forming liquid or the outer shell layer being composed of material capable of being molded when heated. The metes and bounds of the claim is not clear in that it is not clear as to whether the liquid is placed within the recess or as to whether the outer shell layer is molded and heated. A method of constructing the cup as outlined in claim 14 should be claimed as a method of making the cup.

However, the claims as best understood have been examined on their merits.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 10, 11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Morin (US 3,285,247).

Morin discloses a bra 10 with a pair of multilayered breast cups (12) joined by a central band (16) and with a surrounding band (14) wherein the cups include an

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intermediate foam layer (12). (See Morin, col. 2, line 17) structured as claimed and as seen in figure 2. Morin discloses the outer shell layer 30, an inner lining layer 32 and an artificial nipple 24. (See Morin, col. 2, lines 16-38 and figures 1-3).

In regard to claims 2-4 Morin discloses an intermediate foam layer 12 with an aperture 22 and nipple element 24 of rubber and as being introduced through the aperture as claimed. (See Morin col. 2, lines 21-25 and figures 1-3). In regard to claims 10 and 11 the foam is fused to the lining fabric and is polyethylene. (See Morin, col. 2, line 17).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin (US 3,285,247) in view of Thompson (US 2,727,278).

In regard to claim 5 Morin discloses the invention substantially as claimed. However, Morin does not specifically disclose the foam layer (13) integrally molded with a nipple. Thompson discloses a nipple element integrally molded with the foam layer. (See Thompson, figure 1 and col. 3, lines 10-23). In regard to claim 6 Morin discloses the foam as being polyethylene. (See Morin, col. 2, line 17). In regard to claim 17

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Thompson discloses the use of liquid rubber to form the cup as claimed. (See Thompson, col. 3, lines 38-44).

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin (US 3,285,247) .

Morin discloses the invention substantially as claimed and as discussed above in regard to claim 1 above. However, Morin does not specifically disclose the specific breast cup thickness as claimed. In regard to claims 8 and 13. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the padding thickness of Morin in the upper and lower breast sections since the general thickness of the padding is disclosed in the prior art and wherein discovering the exact optimum thickness for the component parts or workable range involves only routine skill in the art (In re Aller, 105 USPQ 233. Finding the optimum desired thickness of the upper and lower breast sections to achieve the desired padding and aesthetic effect would have been within the skill of one of ordinary skill in the art,

Claims 7, 9, 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morin (US 3,285,247) in view of The JC Penney Catalog- Spring-Summer 2022, pages 181, items I,J,K and 185, items J,K.

Morin discloses the invention substantially as claimed with a polyethylene foam padding. However, Morin does not specifically disclose the foam as being polyurethane and the outer layer as being polyester with a nylon lining. The J.C. Penney catalog-

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Spring-Summer, pages 181, items I,J,K and 185 items J and K disclose bras with polyester outer layers, polyurethane foam padding materials and nylon inner layers to achieve a desired aesthetic effect and comfort to the wearer. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bra of Morin to include a polyester outer layer and a nylon inner layer and to substitute the polyethylene foam material with a polyurethane material in order to achieve a desired aesthetic effect, comfort to the wearer and durability during use. (See The J.C. Penney Catalog- Spring-Summer 2002, pages 181, items I,J,K and page 185, item J,K).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 703-308-1282. The examiner can normally be reached on Tuesday-Friday. Copies of missing papers can be requested by calling Customer Service for Group 3700 at 703-306-5648.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gloria Hale  
Primary Examiner  
Art Unit 3765

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